

Amendment No. 1 to HB1731

**Halford
Signature of Sponsor**

AMEND Senate Bill No. 1793

House Bill No. 1731*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 65-17-103, is amended by deleting the section.

SECTION 2. Tennessee Code Annotated, Section 65-4-101(6), is amended by adding the following language as a new subdivision (C):

(C) "Public utility" includes a wind energy facility, as defined in § 65-17-101, and does not include a wind energy facility subject to § 65-17-102;

SECTION 3. Tennessee Code Annotated, Title 65, Chapter 17, Part 1, is amended by adding Sections 4 through 13 as new, appropriately designated sections.

SECTION 4.

No person shall undertake the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion in this state unless a certificate of public convenience and necessity is first obtained from the public utility commission pursuant to chapter 4, part 2, of this title, and a permit is obtained from the local legislative body of the local government in which the facility or expansion will be located pursuant to Sections 5 through 13 of this act. The person shall submit a copy of the certificate of public convenience and necessity with its application for a permit to the local legislative body.

SECTION 5.

(a) A local government may adopt, by action of its local legislative body, local legislation that regulates and establishes the conditions and criteria for the construction,

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operation, or redevelopment of wind energy facilities and for wind energy facility expansions within the jurisdiction of the local government. No such local legislation shall take effect unless it is adopted by a two-thirds (2/3) vote of the local legislative body; except, that if an industrial development board for the local government proposes such local legislation or considers a request for a permit or permit procedures prior to any local legislation being considered by the local legislative body, then the local legislation shall only be subject to a majority vote of the local legislative body. The local legislation adopted pursuant to this subsection (a) shall establish the minimum setback as provided in subdivision (e)(1)(A) for the wind energy facility or wind energy facility expansion; and shall require that environmental impact and wildlife impact assessments be conducted, if applicable, as provided in subdivisions (e)(1)(B) and (e)(1)(C), respectively, that the facility comply with maximum noise levels as provided in subdivision (e)(1)(D), that an applicant submit financial security as provided in subdivision (e)(1)(E), and that a permit holder decommission or remove a wind energy facility upon the occurrence of certain events as provided in subdivisions (e)(1)(F) and (e)(1)(G).

(b) Any local legislation adopted by a municipal legislative body pursuant to subsection (a) shall apply only in the corporate limits of the municipality. A municipal legislative body shall not be authorized to adopt such local legislation unless the county legislative body of the county in which the municipality is located has previously adopted such local legislation within the county.

(c) A local government that regulates the construction, operation, or redevelopment of wind energy facilities and wind energy facility expansions adopted by

a local legislative body pursuant to subsection (a) shall furnish a certified copy of the adopted local legislation to the department.

(d)

(1) The local legislation adopted pursuant to subsection (a) may provide for the issuance of permits for the construction, operation, or redevelopment of wind energy facilities and wind energy facility expansions within the jurisdiction of the local government. The local legislation shall specify procedures governing the application for and issuance, renewal, modification, suspension, revocation, or denial of the permits.

(2) A local legislative body may deny the issuance or renewal of a permit, or revoke, suspend, or modify any existing permit for cause, including the violation of any conditions of the permit or of local legislation adopted pursuant to this chapter, obtaining the permit by misrepresentation, or failing to fully disclose all relevant facts. The local legislation or permit conditions shall include a six-month cure period during which time the local legislative body may establish financial penalties for noncompliance.

(3)

(A) The local legislative body shall review the permit application for compliance with the local legislation adopted pursuant to this chapter, and shall conduct a public hearing after public notice has been given in accordance with subdivision (d)(3)(B) prior to making a determination on the permit application. The local legislative body shall conduct the public hearing within sixty (60) days after receiving a complete permit application.

(B) Public notice of the permit application and the time and location of the public hearing shall be published for at least two (2)

consecutive weeks in a newspaper of general circulation in the local government in which the construction, operation, or redevelopment of the wind energy facility or wind energy facility expansion is to be located.

The notice shall be published beginning at least thirty (30) days prior to the scheduled date of the hearing.

(C) The notice shall provide that any comments on the construction, operation, or redevelopment of the wind energy facility, or wind energy facility expansion, must be submitted to the local legislative body by a specified date, not less than thirty (30) days from the date of the newspaper publication of the notice.

(4) The local legislative body may appoint itself as the agency to process permit applications or conduct the public hearing, or may create or designate another agency to take such action.

(5) The local legislative body may provide, by local legislation, that a reasonable fee be charged to cover the costs of:

(A) Processing and reviewing permit applications;

(B) Conducting public hearings; and

(C) The performance of the local legislative body's duties under this chapter.

(e)

(1) The local legislative body may adopt local legislation with any condition, criteria, or other provision it deems necessary for establishing regulations or granting a permit for the construction, operation, or redevelopment of a wind energy facility or wind energy facility expansion under this chapter. The local legislative body may issue a permit for a general boundary, and the wind energy facility may elect to move the planned locations of a wind turbine or other

wind energy facility component after permit approval; provided, that the locations shall not be moved outside of the permitted boundary and shall comply with all other requirements pursuant to this chapter. The local legislative body may also institute wind energy facility design conditions for granting a permit in order to comply with any conditional approval from the wildlife resources agency and to mitigate potential impacts, as identified by the local legislative body or local agency. Any local legislation adopted pursuant to this chapter shall require that:

(A) The minimum setback for any wind turbine of a wind energy facility from any non-participating landowner's property line be equal to three and one-half (3.5) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip; except, that a non-participating landowner may elect to sign a waiver to allow any wind turbine or group of turbines of a wind energy facility to be placed up to one and one-tenth (1.1) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip from the landowner's property line;

(B) An environmental impact assessment be conducted by qualified, third party experts, paid for by the applicant, of the potential adverse impacts within a maximum of four (4) miles of the perimeter of the facility or expansion; except, that no such assessment shall be conducted if an environmental review of the wind energy facility or any portion of the facility is required pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321, et seq.), which includes public input, a public hearing, an environmental impact statement, and a viewshed analysis. Any environmental impact assessment conducted pursuant to

this subdivision (e)(1)(B) shall include, but not be limited to, a study of the following:

(i) Economic impacts to individuals, property values, tourism, and agriculture;

(ii) Potential adverse impacts on ecosystems, including domestic animals, and habitat and migratory patterns for wildlife;

(iii) Viewshed analysis for national or state parks or forests, historic or cultural sites, public parks or recreation areas, or private conservation lands;

(iv) Hydrogeological assessment, including water bodies, flowing water sources, stormwater runoff, wetlands, groundwater, aquifers, and private wells within a minimum of two (2) miles of the perimeter of the facility or expansion;

(v) Risk assessment and mitigation recommendations for shadow flicker and incidents, such as wind turbine fires, structural damage or failure, ice and blade throw, and hazardous material spills; and

(vi) Risk assessment for civil air navigation, military or law enforcement routes or training exercises, emergency medical flights, radar operations, and cell phone services;

(C) A wildlife impact assessment be conducted through a comprehensive social, economic, and environmental study; except, that no such assessment shall be conducted if an environmental review of the wind energy facility or any portion of the facility is required pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321, et seq.), which includes public input, a public hearing, an environmental impact

statement, and a viewshed analysis. Such local legislation shall also include as a condition of a permit a requirement that the wildlife resources agency review any such wildlife impact assessment and approve, grant conditional approval of, or deny the permit. Any such wildlife impact assessment shall include, but not be limited to, a study of the potential adverse impacts to wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the fish and wildlife commission and the wildlife resources agency, and critical fisheries habitats identified pursuant to applicable state or federal law. No permit shall become effective until the local government has received notification of approval or conditional approval within one hundred twenty (120) days of the permit from the wildlife resources agency;

(D)

(i) Except during the event of inclement weather that prevents the operator of a wind energy facility from controlling the noise level of one (1) or more wind turbines that are part of the wind energy facility, any wind turbine or group of wind turbines of a wind energy facility does not exceed an immission limit at a non-participating landowner's dwelling of thirty-five A-weighted decibels (35 dBA) and forty-five A-weighted decibels (45 dBA) at a non-participating landowner's property line as determined by a qualified, third-party acoustics expert according to American National Standard Institute (ANSI) Standard 12.9 and other applicable ANSI standards; and

(ii) Prior to construction of a facility or expansion, a qualified, third-party acoustics expert, selected and paid for by the applicant, makes a baseline determination of preconstruction noise levels, including modeling and enforcement;

(E)

(i) Prior to the start of construction of a wind energy facility, the applicant for a permit for the construction, operation, or expansion of the wind energy facility, or wind energy facility expansion, establish financial security in the amount of one hundred percent (100%) of the estimate of the total cost to decommission and remove the wind energy facility, as determined by an independent consultant selected and paid for by the applicant; and

(ii) To establish financial security pursuant to subdivision (e)(1)(E)(i), the applicant file with the local legislative body a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash cashier's check, certificate of deposit, bank joint custody receipt, or other approved negotiated instrument, or any combination of the foregoing, in the amount required by subdivision (e)(1)(E)(i). The local legislative body shall take custody and hold the bond or other form of financial security;

(F) The facility is decommissioned or removed if:

(i) Any wind turbine of a wind energy facility ceases to generate electricity for one hundred eighty (180) continuous days, unless the termination of electricity was mandated by state or

federal law; provided, that one (1) or more extensions may be allowed for one-hundred-eighty-day periods at a time; or

(ii) Any wind turbine or group of wind turbines of a wind energy facility violates the noise level restrictions provided in subdivision (e)(1)(D), unless the turbine or group of turbines is brought into compliance within one hundred eighty (180) days of the violation; provided, that a single one-hundred-eighty-day extension may be allowed; and

(G) Within twelve (12) months following the decommissioning of a facility or expansion, the property is restored to its original condition prior to commencement of activities on the site.

SECTION 6.

On or before January 1, 2019, and on or before January 1 of each subsequent year, any local government that has adopted local legislation pursuant to this chapter shall submit a written report on its permitting activities to the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate. The report shall include, but not be limited to, data on the number of approved and denied permits, data summarizing the findings of the environmental impact assessment and wildlife impact assessments conducted during the permit process, data on the activities of any wind energy facilities currently in operation, and data on any decommissioned facilities.

SECTION 7.

The issuance of a permit under this chapter shall not preclude the need for the applicant to obtain any and all other applicable local, state, or federal permits, licenses, or approvals. Nothing in this chapter shall limit the ability of a local government to plan for and regulate the siting or permitting of a wind energy facility or wind energy facility

expansion in accordance with applicable land-use regulations authorized under titles 5 and 6 or the applicable requirements of this title.

SECTION 8.

All permit applications and other documents received by a local legislative body pursuant to this chapter, and any documents used by the local legislative body to evaluate the permit application, shall be subject to disclosure under § 10-7-503; except, that at all times under this chapter, proprietary information contained in a permit application or in other documents received by the local government pursuant to this chapter, or in any other documents used by the local government to evaluate and approve or deny the permit applications, shall remain confidential and not subject to disclosure to the public pursuant to this section, § 10-7-503, or any other law.

SECTION 9.

(a) The local legislative body may seek injunctive relief or institute other appropriate actions or proceedings in the chancery court of:

(1) The local government in which any violation of Section 4 or of the local legislation occurred; or

(2) The local government in which the person responsible for the violation resides or has the person's principal place of business to ensure compliance with this chapter.

(b) The chancery court may grant a temporary or permanent injunction restraining the violation of Section 4 or of the local legislation. The institution of an injunctive action and of the proceedings under this section is in addition to, and not in lieu of, all civil penalties and other remedies prescribed in titles 5 and 6 for permit violations and violations of local legislation.

SECTION 10.

The municipal technical advisory service (MTAS) and the county technical assistance service (CTAS) shall disseminate model local legislation for use by local governments in establishing conditions and other regulations consistent with this chapter for the issuance of permits for wind energy facilities and wind energy facility expansions.

SECTION 11.

This chapter supplements any other provision of this title or other law to provide additional authority to regulate the siting and permitting of wind energy facilities and wind energy facility expansions. Nothing in this chapter prescribes an exclusive procedure or grants exclusive powers relating to the siting or permitting of wind energy facilities and wind energy facility expansions.

SECTION 12.

This chapter shall apply in the geographical boundaries of local governments whose local legislative bodies adopt local legislation pursuant to Section 5. Once adopted, local legislation may only be revoked by the same method used to adopt it.

SECTION 13.

In the event that the requirements of this chapter conflict with applicable federal law or regulations, the federal requirements shall take precedence over the conflicting requirements of this chapter.

SECTION 14. Tennessee Code Annotated, Section 65-17-101(7)(A), is amended by inserting the following language immediately preceding the semicolon:

and has a total height in excess of two hundred feet (200')

SECTION 15. Tennessee Code Annotated, Section 65-17-101, is amended by adding the following as new, appropriately designated subdivisions:

() "Department" means the department of environment and conservation;

() "Local legislation" means any ordinance, resolution, motion, amendment, regulation, or rule adopted by a local government;

() "Local legislative body" means the governing body of a local government;

() "Non-participating landowner" means a landowner not under a lease or other property agreement with the owner or operator of a wind turbine facility;

() "Proprietary" in regard to information means commercial or financial information that is used either directly or indirectly in the business of any applicant submitting information to a local government under this chapter, and that gives the applicant an advantage or an opportunity to obtain an advantage over competitors who do not know or use the information, which information includes trade secrets;

SECTION 16. Tennessee Code Annotated, Section 65-4-201, is amended by adding the following as a new subsection:

The commission shall not issue a certificate of public convenience and necessity for a wind energy facility that includes any wind turbine with a total height in excess of three hundred fifty feet (350') as measured from the ground at its base to the maximum height of the blade tip located on a mountain ridge at an elevation above two thousand five hundred feet (2,500') mean sea level or five hundred feet (500') or more above mean sea level of the adjacent valley floor. This subsection shall not apply to single wind turbines less than one hundred feet (100') in height as measured from the ground at its base to the maximum height of the blade tip and used to generate electricity that is consumed on the same site where the wind turbine is located.

SECTION 17. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 18. This act shall take effect upon becoming a law, the public welfare requiring it.